

1 Plaintiff AFFILIATED FM INSURANCE COMPANY (“FM”) respectfully
2 submits this response to the Court’s Order to file a Status Report regarding
3 settlement in this matter.

4 This is a subrogation action arising out of a non-delivery of cargo consisting
5 of 1,147 tires and wheels (the “Cargo”) belonging to FM’s insured, Tireco, Inc.
6 Plaintiff’s complaint alleges that Defendants OVERNIGHT LOGISTICS, INC.
7 (“OVERNIGHT”), FREIGHT ALL KINDS, INC., FAK, INC., and DANIEL
8 MONTALVO VILLA (dba United DM Express) (“DMV”) (jointly, the
9 “Defendants”) agreed to carry and deliver the Cargo from Fontana, CA to
10 Westwego, LA. Defendants never delivered the Cargo.

11 After discovery and numerous settlement discussions, FM and Defendants
12 (jointly, the “Parties”) agreed, in writing and orally, to a global settlement of all
13 claims. On September 23, 2019, the Parties filed a Joint Notice of Settlement (Dkt.
14 No. 46). Both FM and the Defendants, and each of them, signed the Joint Notice of
15 Settlement. Each Defendant agreed to be responsible for paying part of the
16 consideration.

17 FREIGHT ALL KINDS, INC. and FAK, INC. have paid their agreed
18 consideration and have been dismissed. NATE PLEASE CONFIRM THIS IS
19 ACCURATE OR CHANGE IT ACCORDINGLY.

20 In October 2019, DMV gave FM notice that he would be financially unable to
21 immediately pay all of his share of the consideration. FM and DMV agreed to a
22 payment plan, whereby DMV will pay the full amount of his share within 10
23 months.

24 In October 2019, OVERNIGHT gave FM notice it would be financially
25 unable to immediately pay all of its share of the consideration. FM and
26 OVERNIGHT agreed to a payment plan, whereby OVERNIGHT will pay its share
27 of the consideration within 4 months.

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1 Plaintiff has not received a monthly settlement payment from DMV.
2 However, DMV's counsel has informed Plaintiff's counsel that payment for the
3 missed months is in the mail and that DMV will fulfill his monthly payment
4 obligation moving forward.

5 Plaintiff has not received a monthly settlement payment from OVERNIGHT.
6 On December 3, 2019, December 18, 2019, February 11, 2020, February 13, 2020,
7 February 18, 2020, and March 16, 2020, Counsel for Plaintiff sent emails to Counsel
8 for Defendant Overnight Logistics requesting a status update on Overnight
9 Logistics' settlement payments. On February 13, 2020, Counsel for OVERNIGHT
10 responded: "Let me check with him. I'll let you know tomorrow." However,
11 Counsel for Plaintiff has heard nothing since that day.

12 On November 25, 2019, this Court stayed the case until April 1, 2020, and
13 ordered the parties to file a status report on that date, allowing the parties to seek to
14 continue the stay.

15 Therefore, Plaintiff FM requests that this Court order Defendants DMV and
16 OVERNIGHT to show cause and appear in approximately 30 days regarding the
17 status of settlement payments, and then to order whatever dismissals or further stay
18 may be appropriate based on those showings.

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Respectfully submitted,

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Dated: April 1, 2020

GIBSON ROBB & LINDH LLP

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/s/ NATHANIEL M. SIMONS

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Attorneys for Plaintiff

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AFFILIATED FM INSURANCE
COMPANY

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